

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**PELLEGRINO FOOD PRODUCTS
COMPANY, INC. , et al.,**

Plaintiffs,

v.

CITY OF WARREN, et al.,

Defendants

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Civil Action No. 00-153 Erie

The Honorable Sean J. McLaughlin

JURY TRIAL DEMANDED

CONSENT JUDGMENT

Plaintiffs Pellegrino Food Products Company, Inc., Anthony Pellegrino, Sr., Angela Pellegrino and Thomas Pellegrino (collectively the “Pellegrinos”) and defendant the City of Warren stipulate and agree to the entry of a Consent Judgment against the City of Warren in the amount of \$2.5 million. In support of this Consent Judgment, the parties stipulate and agree as follows:

1. The Pellegrinos commenced this action in May of 2000, alleging that the City, John Nemcovsky, A. Kenneth DuPont, William Morgan, Donald A. Worley and George Crozier (collectively the “Individual City Defendants”), among others, are liable under the Civil Rights Act, 42 U.S.C. § 1983, for violating the Pellegrinos substantive due process and equal protection rights and for interfering with prospective contractual relations. The Pellegrinos claims relate to their request for City approvals and permits necessary to construct an addition to their food manufacturing plant located at 100 Lookout Street, City of Warren.

2. The City and the Individual City Defendants deny all liability to the Pellegrinos.

3. After conducting extensive discovery, the City and the Individual City Defendants moved this Court for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. After considering the briefs of the parties and hearing oral argument, this Court denied the Motion for Summary Judgment. The Individual City Defendants then filed a Notice of Appeal to the Third Circuit under the collateral order doctrine based on their assertion of qualified immunity. The Individual City Defendants also filed a Motion for Reconsideration with this Court. After considering the parties' briefs and hearing oral argument, this Court denied the Motion for Reconsideration, and the Individual City Defendants filed a Supplemental Notice of Appeal. The Third Circuit affirmed this Court's decision.

4. Subsequent to the Third Circuit's affirmance, this Court held a case management conference and scheduled trial for March 13, 2005. Trial was expected to last approximately 4-6 weeks.

5. At trial, the Pellegrinos intended to present evidence of direct and consequential damages in an amount in excess of \$5 million, damages for emotional distress and punitive damages. Additionally, if victorious at trial, the Pellegrinos intended to file a petition to recover attorneys' fees and costs, expected to exceed \$1.5 million.

6. Shortly before the commencement of trial, the Pellegrinos and the City Defendants agree to settle this litigation in for \$2.5 million in order to avoid the uncertainties, risk and expense associated with trial.

7. The Pellegrinos agree to limit their collection of the \$2.5 million to the following sources:

a. \$1 million from the City of Warren's public officials insurance policy issued by Coregis;

b. \$500,000 from the City of Warren payable pursuant to the terms of a promissory note entered into between Pellegrino Food and the City of Warren on or about March 21, 2005; and

c. \$1 million from the City of Warren's comprehensive general liability insurance policies, policy nos. 8 81 MXG 80684423, 8 81 MXG 807132623 and 8 81 MXG 80742617, issued by Fireman's Fund.

Based on the foregoing and upon consent of the parties, it is therefore ORDERED that JUDGMENT is entered in favor of plaintiffs Pellegrino Food Products Company, Inc., Anthony Pellegrino, Sr., Angela Pellegrino and Thomas Pellegrino and against defendant the City of Warren in the amount of \$2.5 million.

STIPULATED AND AGREED TO:

COZEN O'CONNOR

WEINHEIMER, SCHADEL & HABER, P.C.

/s/Thomas B. Fiddler

/s/David L. Haber

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(Electronic signature by permission)

Attorneys for Defendant City of Warren

SO ORDERED:

Sean J. McLaughlin, J.

